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Surbhi Sarna

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BOSTON SCIENTIFIC CORPORATION,
BOSTON SCIENTIFIC SCIMED, INC.
AND FORTIS ADVISORS LLC,

Plaintiffs,

v.

BIOCARDIA, INC.,

Defendant.

BIOCARDIA, INC.,

Counterclaimant,

v.

BOSTON SCIENTIFIC CORPORATION,
BOSTON SCIENTIFIC SCIMED, INC.
AND FORTIS ADVISORS LLC, AND
SURBHI SARNA,

Counterdefendants.

No. 3:19-cv-05645-VC

**REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF SURBHI SARNA'S
MOTION TO DISMISS BIOCARDIA,
INC.'S AMENDED COUNTERCLAIM**

Date: March 29, 2020

Time: 10:00 a.m.

Ctrm.: 4, 17th Floor

Judge: Hon. Vince Chhabria

TO THE COURT, ALL PARTIES AND COUNSEL OF RECORD:

Pursuant to Federal Rule of Evidence 201 and relevant case law regarding judicial notice, in support of her Motion to Dismiss BioCardia, Inc.'s Amended Counterclaim, Surbhi Sarna hereby requests the Court to take judicial notice of the following:

1. Ms. Sarna requests the Court take judicial notice of the electronic record of the U.S. Patent and Trademark Office reflecting U.S. Application No. 13/979,691, which claimed priority to Provisional Application No. 61/435,945 filed on January 25, 2011, was published on November 7, 2013 as Patent Application Publication No. US 2013/0296686 A1. A true and correct copy of the publication is attached hereto as Exhibit A.
2. Ms. Sarna requests the Court take judicial notice of the electronic record of the U.S. Patent and Trademark Office reflecting U.S. Application No. 14/357,875, which claimed priority to Provisional Application No. 61/559,120 filed on November 13, 2011, was published on October 30, 2014 as Patent Application Publication No. US 2014/0323859 A1. A true and correct copy of the publication is attached hereto as Exhibit B.

According to Federal Rule of Evidence 201, a court “may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b). A court “must take judicial notice if a party requests it and the court is supplied with the necessary information.” Fed. R. Evid. 201(c).

A court may take judicial notice of the records of the U.S. Patent and Trademark Office, including patent publications. *See, e.g., Baxter Healthcare Corp. v. Becton*, Case No. 17-CV-2186 JLS, 2018 U.S. Dist. LEXIS 221719, *12-13 (S.D. Cal. Sept. 5, 2018) (granting judicial notice of U.S. Patent and Trademark Office patent application publication); *Pollution Denim & Co. v. Pollution Clothing Co.*, 547 F. Supp. 2d 1132, 1135 (C.D. Cal. 2007) (granting judicial notice of online records of U.S. Patent and Trademark Office); *Opperman v. Kong Techs., Inc.*, No. 13-cv-00453-JST, 2017 WL 3149295, at *4 (N.D. Cal. July 25, 2017) (granting judicial notice of a

patent); *Pepitone v. Am. Standard, Inc.*, 983 F.2d 1087, n.1 (Fed. Cir. 1992) (allowing judicial notice of prior art published patents under Fed. R. Evid. 201(b) & (c)).

The Court should take judicial notice of the publications attached as Exhibit A and Exhibit B to this Request for Judicial Notice because they are official records of the U.S. Patent and Trademark Office, a federal agency. Moreover, the publications are downloadable directly from the U.S. Patent and Trademark Office's website located at www.uspto.gov, making the records readily determined from sources whose accuracy cannot reasonably be questioned. Thus, the publication is subject to judicial notice.

Dated: January 31, 2020

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